

304 U. S. 444, *Cantwell v. Connecticut*, 310 U. S. 300; *Grosjean v. American Press Co.* 297 U. S. 233.

Section 9(h) further violates the Constitution by adopting a test of guilt by association, a test which has been repeatedly discredited by the Supreme Court. *Schneiderman v. U. S.*, 320 U. S. 118; *Bridges v. Wixon*, 326 U. S. 135 (concurring opinion by Murphy, J.).

2. *Section 9(h) constitutes a bill of attainder in violation of Article I, Section 9 of the Constitution.*

Section 9(h) denies certain rights to unions whose officers are members or affiliates of a specifically named political party. By naming that political party in the legislation under attack, Congress sought to make irrelevant the activities or beliefs of that party or of its members. Congress may not legislate the conclusion that an individual or a political party holds certain beliefs or promotes certain doctrines. This is basically a judicial function, and for Congress to take over this function constitutes a bill of attainder. *United States v. Lovett*, 328 U. S. 303; *Ex parte Garland*, 4 Wall. 333; *Cummings v. Missouri*, 4 Wall. 277.

3. *Section 9(h) is repugnant to the Constitution in that it is vague and indefinite in conflict with the requirements of the Fifth Amendment.*

Legislation must conform to the requirements of precision and freedom from ambiguity that have been established as basic to our concept of due process of law. *Small Co. v. American Sugar Ref. Co.*, 267 U. S. 233; *Lanzetta v. New Jersey*, 306 U. S. 451.

Section 9(h) does not meet these requirements since its language is not sufficiently clear and unambiguous. Terms such as "affiliated," "believe in," "teaches," and "supports" are not susceptible of exact definition, and none of

them furnishes such a clear standard of meaning as to meet the Constitutional requirements. No definition of any of these terms is provided in the Act and no interpretation is available either from context or usage. Yet a failure to understand these vague terms may subject one to a severe criminal penalty.

### Opinion of the Court

A copy of the opinion of the statutory court is affixed hereto as Exhibit A.

### Conclusion

It is thus clear that this appeal is within the exclusive jurisdiction of the Supreme Court and that substantial questions of widespread importance are involved, requiring a review of the judgment of the statutory court on the merits.

Respectfully submitted,

VICTOR RABINOWITZ,  
NEUBURGER, SHAPIRO, RABINOWITZ  
& BOUDIN,

*Attorneys for Plaintiffs.*

October 21, 1948.

**APPENDIX "A"**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF NEW YORK

Civ. 46-729

ARTHUR OSMAN, DAVID LIVINGSTON, JACK PALEY, SHIRLEY  
MOSHINSKY, and Wholesale and Warehouse Workers  
Union, Local 65, an unincorporated association of more  
than seven persons, *Plaintiffs*,

against

CHARLES T. DOUDS, individually and as Regional Director  
of the National Labor Relations Board, *Defendant*.

**Memorandum**

This case has been submitted upon the same memoranda  
of law as were filed and argued in *Wholesale and Warehouse  
Workers Union v. Douds*, Civil No. 46-157. The majority  
of the court adheres to the opinion filed in that case and  
Judge Rifkind adheres to his dissent therein. Accordingly,  
the plaintiffs' application is denied and the defendant's mo-  
tion is granted upon the authority of our prior decision.

THOMAS W. SWAN,  
*Circuit Judge*

ALFRED C. COXE,  
*District Judge*

SIMON H. RIFKIND,  
*District Judge*

Dated: October 19, 1948